

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<i>RESEARCH IN MOTION LIMITED,</i>	§	
<i>RESEARCH IN MOTION CORPORATION,</i>	§	
<i>and TIP COMMUNICATIONS, LLC,</i>	§	
	§	
Plaintiffs,	§	CIVIL ACTION NO. 3:08-CV-0284-G
	§	
v.	§	CONSOLIDATED WITH
	§	
<i>MOTOROLA, INC.,</i>	§	3:08-CV-0317-G
	§	3:08-CV-1545-G
Defendant.	§	3:09-CV-0072-G
		3:09-CV-0464-G

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**PLAINTIFF TIP COMMUNICATIONS, LLC'S REPLY TO  
MOTOROLA'S COUNTERCLAIMS**

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**TO THE HONORABLE COURT:**

Plaintiff TIP Communications, LLC ("TIP") submits this Reply to the Counterclaims asserted by Defendant Motorola, Inc. ("Motorola"), in its Answer and Counterclaims filed with the Court on May 1, 2009. TIP hereby responds to each numbered paragraph of Motorola's Counterclaims as follows, and denies each of Motorola's allegations except as set out herein:

**TIP'S REPLY TO MOTOROLA'S MAY 1, 2009 COUNTERCLAIMS**

**Parties**

1. TIP admits the allegations of Paragraph 1 of Motorola's Counterclaims.
2. TIP admits the allegations of Paragraph 2 of Motorola's Counterclaims.

**Jurisdiction and Venue**

3. Paragraph 3 of Motorola's Counterclaims contains conclusions of law to which no response is required, but to the extent that any response is required, TIP admits the allegations.

4. Paragraph 4 of Motorola's Counterclaims contains conclusions of law to which no response is required, but to the extent that any response is required, TIP admits the allegations.

5. Paragraph 5 of Motorola's Counterclaims contains conclusions of law to which no response is required, but to the extent that any response is required, TIP admits the allegations.

6. Paragraph 6 of Motorola's Counterclaims contains conclusions of law to which no response is required, but to the extent that any response is required, TIP admits that it maintains a regular and established place of business in this District, but denies all other allegations.

### **FIRST COUNTERCLAIM**

#### **Declaratory Judgment - Noninfringement of the '329 Patent**

7. Paragraph 7 of Motorola's Counterclaims contains allegations to which no response is required, but to the extent that any response is required, TIP denies the allegations.

8. Paragraph 8 of Motorola's Counterclaims contains allegations to which no response is required, but to the extent that any response is required, TIP admits that Motorola seeks a declaratory judgment of noninfringement of U.S. Patent No. 5,956,329 ("329 Patent").

9. TIP admits that it has brought suit against Motorola for infringement of the '329 Patent. TIP lacks knowledge or information sufficient to form a belief as to whether Motorola has a reasonable apprehension and denies all other allegations of Paragraph 9 of Motorola's Counterclaims.

10. TIP admits that it alleges in its Complaint in this Action, filed on March 9, 2009 (the "Complaint"), that it owns the entire right, title, and interest to the '329 Patent. TIP further admits that Motorola disputes these allegations.

11. TIP admits the allegations of Paragraph 11 of Motorola's Counterclaims.

12. TIP admits the allegations of Paragraph 12 of Motorola's Counterclaims.

13. TIP admits that Motorola has denied TIP's allegations, but otherwise denies the allegations of Paragraph 13 of Motorola's Counterclaims. As set forth fully in TIP's Complaint, Motorola has infringed and continues to infringe the '329 Patent, and has and continues to induce others to infringe the '329 Patent and/or has and continues to contribute to infringement of the '329 Patent by others. (TIP Compl. ¶ 8-12.)

14. Paragraph 14 of Motorola's Counterclaims contains conclusions of law to which no response is required, but to the extent that any response is required, TIP denies the allegations.

15. TIP admits that Motorola has requested a judicial determination and declaration, but otherwise denies the allegations of Paragraph 15 of Motorola's Counterclaims.

## **SECOND COUNTERCLAIM**

### **Declaratory Judgment - Invalidity of the '329 Patent**

16. Paragraph 16 of Motorola's Counterclaims contains allegations to which no response is required, but to the extent that any response is required, TIP denies the allegations.

17. Paragraph 17 of Motorola's Counterclaims contains allegations to which no response is required, but to the extent that any response is required, TIP admits that Motorola seeks a declaratory judgment of invalidity of any and all claims of the '329 Patent.

18. TIP admits that it has brought suit against Motorola for infringement of the '329 Patent. TIP lacks knowledge or information sufficient to form a belief as to whether Motorola has a reasonable apprehension and denies all other allegations of Paragraph 18 of Motorola's Counterclaims.

19. TIP denies the allegations of Paragraph 19 of Motorola's Counterclaims.

20. Paragraph 20 of Motorola's Counterclaims contains conclusions of law to which no response is required, but to the extent that any response is required, TIP denies the allegations.

21. TIP admits that Motorola has requested a judicial determination and declaration, but otherwise denies the allegations of Paragraph 21 of Motorola's Counterclaims.

### **THIRD COUNTERCLAIM**

#### **Declaratory Judgment - Unenforceability Based on Patent Misuse**

22. Paragraph 22 of Motorola's Counterclaims contains allegations to which no response is required, but to the extent that any response is required, TIP denies the allegations.

23. Paragraph 23 of Motorola's Counterclaims contains allegations to which no response is required, but to the extent that any response is required, TIP admits that Motorola seeks a declaratory judgment that TIP's claims are barred by the doctrine of patent misuse.

24. TIP admits that it has brought suit against Motorola for infringement of the '329 Patent. TIP lacks knowledge or information sufficient to form a belief as to whether Motorola has a reasonable apprehension and denies all other allegations of Paragraph 24 of Motorola's Counterclaims.

25. TIP denies the allegations of Paragraph 25 of Motorola's Counterclaims.

26. TIP denies the allegations of Paragraph 26 of Motorola's Counterclaims.

27. Paragraph 27 of Motorola's Counterclaims contains conclusions of law to which no response is required, but to the extent that any response is required, TIP denies the allegations.

28. TIP admits that Motorola has requested a judicial determination and declaration of the respective rights and duties of the parties, but otherwise denies the allegations of Paragraph 28 of Motorola's Counterclaims.

### **TIP'S AFFIRMATIVE DEFENSES TO MOTOROLA'S COUNTERCLAIMS**

On information and belief, TIP asserts the following affirmative defenses to Motorola's Counterclaims, as submitted on May 1, 2009.

**First Defense: Failure to State a Claim**

Motorola's Counterclaims, in whole or in part, fail to state claims upon which relief can be granted.

**Second Defense: Laches**

Motorola's claims for relief are barred, in whole or in part, by the doctrine of laches.

**Third Defense: Waiver and Estoppel**

Motorola's claims for relief are barred, in whole or in part, by the doctrines of waiver and/or estoppel.

**Fourth Defense: Unclean Hands**

Motorola's claims for relief are barred, in whole or in part, by the doctrine of unclean hands.

**Fifth Defense: Reservation of Defenses**

TIP reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the patent laws of the United States and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation of the case.

Dated: May 21, 2009

Respectfully submitted,

/s/ John R. Emerson

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Plaintiff TIP Communications, LLC's Reply to Motorola's Counterclaims was served on all counsel of record in accordance with the Federal Rules of Civil Procedure on the 21st day of May, 2009.

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